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January 7, 2025

Molly Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, CA 94103

Re: *California v. Express Scripts, Inc.*, No. 24-01972 (oral argument set for Mar. 4, 2025)

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), I write on behalf of Defendants-Appellants to inform the Court of two recent orders—one in the remand proceedings in this case and one in a similar case pending in federal district court in Arkansas.

First, on December 17, 2024, the Los Angeles County Superior Court ruled on Defendants' demurrer to the Second Amended Complaint. The state court rejected Defendants-Appellants' *federal preemption* defenses, while dismissing the complaint with leave to amend on a *state-law* defense (Exhibit A). This decision supports Defendants-Appellants' argument that a state court is not as hospitable to federal defenses as a federal court would be, which is why Congress codified federal-officer removal. OB 5, 44-45. The decision also reinforces Defendants-Appellants' argument for a stay pending appeal. OB 42-46. If this Court reverses the remand decision below, the state court's intervening orders (including its grant of leave to amend the purported disclaimer

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at issue in this appeal (Ex. A at 19)) will have to be vacated, resulting in a waste of judicial and party resources that could be readily avoided with a stay.

Second, on December 31, 2024, the court in *Arkansas ex rel. Griffin v. Optum, Inc.*, No. 24-701 (E.D. Ark.) stayed its order remanding that case to state court (Exhibit B). *Arkansas* involved many of the same defendants and virtually the same claims as this case. Unlike in this case, however, the court held that “under the Supreme Court’s reasoning in *Coinbase, Inc. v. Bielski*, [it] must stay this case while any interlocutory appeal is pending since the issue is whether litigation of Plaintiff’s claims can proceed in this court.” Ex. B at 10-11 (footnote omitted). To the extent the *Arkansas* decision gives effect to the disclaimer of the plaintiff in that case, it is mistaken for the reasons that Defendants-Appellants have identified in their briefing in this case (OB 32-37), and the defendants in that case will challenge it on appeal—with the remand order properly stayed in the interim.

Respectfully submitted,

/s/ Christopher G. Michel

Christopher G. Michel

cc: Counsel of Record